IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 4085 of 2006

Date of decision: 09.10.2006

Jaswinder Kaur

..... Petitioner.

Versus

Charanjit Singh

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Ms. Amandeep Sibia, Advocate
for the petitioner.

Mr. G.B.S. Dhillon,Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed against the order dated 26.04.2006 passed by the learned Additional Civil Judge (Senior Division), Ludhiana whereby an application for interim maintenance during the pendency of the petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was declined.

A reading of the order would show that the application was declined primarily on the ground that since the petitioner-wife was earlier married and had solemnized her second marriage during the subsistence of the first marriage which was null and void and hence she was not entitled to

any maintenance. Controverting the aforesaid findings learned counsel for the petitioner has drawn my attention to para 4 of the written statement filed by the husband- respondent in the petition under Section 9 of the Hindu Marriage Act to contend that in fact the respondent has himself stated therein that the petitioner was a divorcee at the time of her marriage with him. The relevant part of the reply reads as hereunder:

> "That para No.4 of the petition is admitted to be correct to the extent that the petitioner was already married and was a divorcee at the time of her marriage and had two sons from her first marriage i.e. Jagmohan @ Happy and Manpreet @ Mani, but is vehemently denied that it was duly agreed by the respondent at the time of his marriage with the petitioner that he will keep both the said children with him and will treat them as his own sons and will also give them full love and affection."

She has further drawn my attention towards two photographs attached with the application as Annexure-P3 to prima facie show that the petitioner and the respondent were married in a Gurudwara.

On the other hand, learned counsel for the respondent states that if the entire written statement is read, it would be clear that the husband has taken a stand that no marriage was ever performed between the parties. However, he does not deny that there was a "Friendly relationship" between the parties. Referring to the photographs, learned counsel for the respondent states that no marriage was actually performed.

After hearing counsel for the parties and going through the record, I am certainly left with an impression that the respondent has taken undue advantage of the petitioner and cohabited with her. Having taken advantage of her, he has now abandoned her. This is apparent not only from the photographs attached with this petition but also from the reading of the reply wherein he admits to have had a "friendly relationship" with the petitioner.

Whether or not there was an actual marriage between the parties or whether or not the earlier marriage of the petitioner had been annulled are questions of fact which would be determined by the matrimonial court where the petition is pending. However in the facts and circumstances of this case, I am of the opinion that till such time as the application is ultimately decided, some interim maintenance is liable to be granted to the petitioner. The respondent is a Constable in the Punjab Police. The petitioner has stated that he is getting salary of Rs.10,000/- per month. It is also contended that the respondent- husband is having immovable property. Since the respondent is a Constable in the Punjab police whereas the petitioner is stated to be an illiterate lady with two children, I am of the opinion that the ends of justice would be met if she is granted an interim maintenance at the rate of Rs.1000/- per month. The maintenance would be payable from the date of filing of petition under Section 9 of the Hindu Marriage Act. Apart from this, the petitioner would also be entitled to litigation expenses, which are assessed at Rs.2200/-.

The observations made herein above are only for the purpose of decision of this petition and would have no bearing on the ultimate decision of the petition filed under Section 9 of the Hindu Marriage Act.

October 09, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**